

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-02

**OCEANIC BRIDGE INTERNATIONAL, INC. – POSSIBLE VIOLATIONS OF
SECTION 10(a)(1) OF THE SHIPPING ACT OF 1984**

THIRD ORDER TO SUPPLEMENT THE RECORD

The Bureau of Enforcement (BOE) has filed a motion for decision on default. To support its motion, BOE filed an exhibit summarizing information from records of forty-nine shipments carried by respondent Oceanic Bridge International, Inc. (Oceanic Bridge) between December 2010 and May 2011, and information from service contracts of Oceanic Bridge and another entity with Maersk Line. (Bureau of Enforcement Motion for Decision on Default, Carley Statement Attachment A.) BOE proffers Attachment A as a summary of the evidence establishing the rate that Oceanic Bridge should have paid for each shipment under its own service contracts and the money it saved by using service contracts to which it was not a party or named affiliate of a party entitled to access the contract. As explained more fully below, it is not clear that the rate Oceanic Bridge should have paid stated in Attachment A is based on the correct dates. To determine this question, BOE is ordered to respond to questions set forth below.

The Order of Investigation and Hearing commencing this proceeding alleges that Oceanic Bridge was a non-vessel-operating common carrier licensed by the Commission. Oceanic Bridge entered into service contracts with Maersk Line, a vessel-operating common carrier, for transportation of cargo from Asia to the United States. The Order alleges that on at least forty-nine shipments, Oceanic Bridge accessed Maersk Line service contracts of another entity, Dalian Haiqiao Enterprises Co., Ltd. (Dalian Haiqiao) to pay a lower rate. Commission regulations require that a service contract include the “legal names and business addresses of the contract parties [and] the legal names of affiliates entitled to access the contract.” 46 C.F.R. § 530.8(b)(9). The Maersk Line-Dalian Haiqiao service contracts¹ do not identify Oceanic Bridge as a contract party or an affiliate; therefore, Oceanic Bridge was not entitled to access these contracts. The Order alleges that

¹ The service contracts were filed confidentially with the Commission as required by 46 U.S.C. § 40502(b)(1). BOE has submitted copies of the service contracts.

the Dalian Haiqiao contract rates were lower than the Oceanic Bridge contract rates. By using the unjust or unfair device or means of accessing the Maersk Line-Dalian Haiqiao service contracts to which it was not a party or an affiliate of a party, Oceanic Bridge allegedly violated section 10(a)(1) of the Shipping Act of 1984 by obtaining ocean transportation for property at less than the rates or charges that would otherwise apply. *Oceanic Bridge International, Inc. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, FMC No. 14-02 (FMC Feb. 21, 2014) (Order of Investigation and Hearing).

Oceanic Bridge has not responded to the Order, to a Notice of Default and Order to Show Cause, *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Apr. 22, 2014) (Notice of Default and Order to Show Cause), or to BOE's motion for decision on default. The motion for decision on default is pending.

As part of its motion for decision on default, BOE submitted a declaration with an Attachment A entitled "Re-rate Schedule of Shipments" prepared by a Commission employee. Attachment A summarizes information from the shipping documents of the shipments at issue that were also filed with the motion and from the Maersk Line service contracts with Oceanic Bridge and Dalian Haiqiao. The shipments on which it is alleged Oceanic Bridge violated section 10(a)(1) occurred between December 2010 and May 2011. During that period, Oceanic Bridge and Dalian Haiqiao each had two service contracts with Maersk Line, one each for the period ending April 30, 2011, and one each for the period May 1, 2011, and after. (Maersk Line service contracts 429377 and 518197 (Oceanic Bridge) and Maersk Line service contracts 460860 and 518178 (Dalian Haiqiao).) Among their terms, the contracts established the basic ocean freight and applicable tariff charges for transportation of cargo between locations of receipt in China, Hong Kong, and Taiwan and locations for delivery in the United States. The contracts provided that they could be "amended by the parties by each party's agreement in writing." The parties amended Maersk Line-Oceanic Bridge service contract 429377 twenty-five times and Maersk Line-Dalian Haiqiao service contract 460860 eleven times. Between their effective dates at the beginning of May 2011, and May 25, 2011, the date the last shipment was shipped on board the Maersk Line vessel, the parties amended Maersk Line-Oceanic Bridge service contract 518197 four times. Maersk Line-Dalian Haiqiao service contract 518178 was not amended during this period. The amendments that the contracts state were "effective on the dates they are filed with the . . . Commission"² added or deleted locations of receipt or delivery of cargo, changed basic ocean freight rates for transportation between two locations, and/or changed applicable tariff charges.

The Order alleges Oceanic Bridge violated section 10(a)(1) of the Act, which provides:

A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean

² Each amendment to a service contract sets forth the effective date.

transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a). Proving only that a person used an unjust or unfair device to obtain transportation of cargo pursuant to a service contract to which the person was not a party or affiliate of a contract party identified in the contract would not prove a violation of section 10(a)(1). The evidence must also prove that the person received transportation “at less than the rates or charges that would otherwise apply.” The Order alleges that by using the rates established by the Dalian Haiqiao contracts instead of its own contracts for the forty-nine shipments, Oceanic Bridge obtained transportation at lower rates than would apply if Oceanic Bridge had obtained transportation using its own service contracts.

Oceanic Bridge provided shipping documents to BOE during a Commission audit of Oceanic Bridge’s shipping activities. BOE included shipping documents for forty-nine Oceanic Bridge shipments as exhibits attached to its motion for decision on default. The documents indicate that Maersk Line issued a non-negotiable waybill for each shipment that referred by number to the Maersk Line-Dalian Haiqiao service contract pursuant to which transportation was being provided. The rates that Maersk Line charged Oceanic Bridge are derived from the Maersk Line-Dalian Haiqiao service contract and are stated in a Maersk Line arrival notice issued to Oceanic Bridge for each shipment.³ OBI Shipping, Inc., apparently an affiliate of Oceanic Bridge, issued a check in that amount to Maersk Line to pay for each shipment.

To prove a violation of section 10(a)(1), the “reliable, probative, and substantial evidence,” 5 U.S.C. § 556(d), must establish that Oceanic Bridge would have paid more for transportation under its own service contract with Maersk Line than it paid under the Maersk Line-Dalian Haiqiao service contract. Maersk Line service contracts 429377, 460860, 518178, and 518197 provide that “[t]he invoice [for a shipment] will be calculated based on the gate-in date of the last container of shipment.” (Maersk Line service contracts 429377, 460860, 518178, and 518197.) As noted above, the parties periodically amended the contracts to change the basic ocean freight and/or applicable tariff charges between location pairs. Therefore, the basic ocean freight and applicable tariffs Oceanic Bridge should have paid for each shipment pursuant to its own service contracts equals the rate established by the amendment to the Maersk Line-Oceanic Bridge service contract in effect on the “gate-in date” of the shipment. The service contracts do not appear to define the term “gate-in date,” but its phraseology suggests that it is the date Maersk receives the container at the port of loading.

BOE submitted Attachment A to provide a summary of the evidence in the shipping documents and service contracts. The declaration supporting Attachment A states:

³ Maersk Line invoices issued to Oceanic Bridge for two shipments are also included. The rates charged in the invoice are the same as the rates listed in the corresponding arrival notices. (See BOE Exhibit 3 (BOE App. at 12 & 14); BOE Exhibit 6 (BOE App. at 32 & 35).)

8. I analyzed the shipping documents to verify that the rates and charges in the contracts applied to the commodity transported, at the time of shipment, and between the origin and destination port pairs. My shipment-by-shipment analysis is attached hereto as Appendix A.
9. Appendix A identifies each shipment by the Maersk master bill of lading number.⁴ The commodity identified on the Maersk master bill is in the column titled "Commodity", and in each case, matches the commodity description on each underlying house bill of lading issued by Oceanic Bridge. The column identified as "Ocean Freight Charged" states the ocean freight charges assessed by Maersk under the service contracts with Dalian Haiqiao. The column identified as "Applicable S/C Charges" reflects the charges prescribed by the service contracts signed by Oceanic Bridge, as referenced above. The column titled "Rate Benefit" shows the amount by which the applicable charges exceed the charges billed and paid.

(Verified Statement of Michael F. Carley ¶ 9.)

With the exception of two Maersk Line non-negotiable waybills (Exhibit 7 (BOE App. at 42); Exhibit 29 (BOE App. at 205)), each waybill has two dates: (1) a "Shipped on Board Date (Local Time);" and (2) a "Date Issue of Waybill." (See, e.g., BOE App. at 7.) Attachment A includes a column headed "Date of B/L." Each "Date of B/L" entry on Attachment A corresponds to the "Date Issue of Waybill" on the Maersk Line non-negotiable waybill for that shipment. While the "Date Issue of Waybill" and the "Shipped on Board Date" are the same on a majority of the waybills, on twenty shipments, the "Date Issue of Waybill" is after the "Shipped on Board Date." (See Exhibits 3 (BOE App. at 15), 8 (BOE App. at 49), 11 (BOE App. at 69), 12 (BOE App. at 77), 15 (BOE App. at 99), 16 (BOE App. at 106), 17 (BOE App. at 114), 20 (BOE App. at 137), 21 (BOE App. at 145), 22 (BOE App. at 152), 27 (BOE App. at 190), 28 (BOE App. at 198), 30 (BOE App. at 212), 31 (BOE App. at 220), 32 (BOE App. at 228), 36 (BOE App. at 259), 37 (BOE App. at 268), 38 (BOE App. at 276), 39 (BOE App. at 283), and 50 (BOE App. at 365).) If, as the terms suggests, the "gate-in date" is the date a shipment arrives at the port of loading, that arrival could not have occurred after the shipment had been loaded on board the vessel. I also note that for the shipment documents in Exhibit 39, the Oceanic Bridge bill of lading indicates that the container was loaded on the *Maersk Dharan* in Busan, Korea, with the port of discharge indicated as Hong Kong and place of delivery Miami. No legible date appears on this bill of lading. (BOE App. at 287.) The Maersk Line non-negotiable waybill for this shipment indicates the container was shipped on board the *Emma Maersk* on 2011-03-17 in Ningbo with place of delivery as Miami and the Date Issue of Waybill is 2011-04-18. (BOE App. at 283.)

⁴ The record contains a Maersk Line non-negotiable waybill for each shipment with a number that corresponds to the "Maersk master bill of lading number" stated on Attachment A. No Maersk Line master bills of lading are in the exhibits submitted by BOE.

BOE offers Attachment A as a summary of the evidence to prove the rate Oceanic Bridge should have paid pursuant to its own service contracts and the rate benefit Oceanic Bridge received by using the Dalian Haiqiao service contracts. A summary must be consistent with the underlying evidence on which it is based. To have probative value of these amounts, the entries in the "Applicable S/C Charges" and the "Rate Benefit" columns of Attachment A must be based on the rate established by the amendment to the Maersk Line-Oceanic Bridge service contract in effect on "the gate-in date of the last container" of the shipment. It does not appear that they are based on this date, but on the "Date Issue of Waybill" for the shipment that on many shipments is after the shipment had been loaded on board the vessel. To determine the probative value of these figures for the purpose for which BOE submitted Attachment A (that is, the rate Oceanic Bridge should have paid under its own service contracts and the "rate benefit" it received by using the Maersk Line-Dalian Haiqiao service contracts), it is hereby

ORDERED that on or before October 8, 2014, BOE respond to the following questions.

1. What is the meaning of the term "gate-in date" as used in the Maersk Line service contracts?
2. Is the date stated in the Attachment A column headed "Date of B/L" the "gate-in date" for each shipment?
3. If the "Date of B/L" is not the "gate-in date" for a shipment, is the "gate-in date" established by other information in the record?
4. If the "gate-in date" is not established by other information in the record, is there any date between December 2010, and May 2011, on which the rate established by the Maersk Line-Dalian Haiqiao service contract was equal to or greater than the rate established by the Maersk Line-Oceanic Bridge service contract?
5. For Exhibit 13 and Exhibits 15-45, the "Applicable S/C Charges" column indicates that the "Amount includes base rate plus Bunker Adjustment Factor (BAF). On these shipments, Maersk's original bill did not separately assess the BAF." What is the source of the BAF added to the base rate for these shipments?



Clay G. Guthridge
Administrative Law Judge